

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

PRESTON W. SIMPSON,

Plaintiff,

V.

ROBERT N. MAYER, et al.,

Defendants.

No. 1:20CV159 DDN

## OPINION, MEMORANDUM AND ORDER

This closed case is before the court on self-represented Plaintiff Preston W. Simpson's notice of appeal, motion for leave to proceed *in forma pauperis* on appeal, and motion for appointment of counsel. ECF Nos. 41-44. For the reasons discussed below, both motions will be denied.

“The filing of a notice of appeal ... confers jurisdiction on the court of appeals and divests the district court o[f] its control over those aspects of the case involved in the appeal.” *Liddell v. Bd. of Educ.*, 73 F.3d 819, 822 (8th Cir. 1996) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). But filing a notice of appeal does not prevent a district court from taking action in furtherance of the appeal or prevent it from hearing motions on collateral matters to those at issue on appeal. *Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003) (citations omitted).

On December 1, 2021, the Court dismissed this case for failure to state a claim upon which relief may be granted. ECF Nos. 38-39. When the Court dismissed this action, it certified in writing that an appeal from the dismissal would not be taken in good faith. *See id.*; 28 U.S.C. § 1915(a)(3). As a result, Plaintiff's motion for leave to proceed *in forma pauperis* on appeal will be denied.

Because a notice of appeal has been filed, this matter is no longer before the Court. This Court does not appoint appellate counsel. Plaintiff may move for the appointment of counsel in the appellate court. Plaintiff should file any motion for appointment of counsel on appeal directly with the United States Court of Appeals for the Eighth Circuit. As a result, I will deny the motion for appointment of counsel without prejudice.

Accordingly,

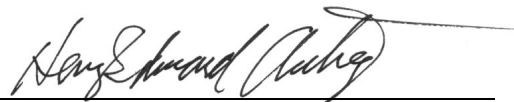
**IT IS HEREBY ORDERED** that Plaintiff's motion for leave to proceed *in forma pauperis* on appeal [ECF No. 42] is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff's motion for appointment of counsel [ECF No. 44] is **DENIED** without prejudice.

**IT IS FURTHER ORDERED** that Plaintiff shall, within **thirty (30) days** of the date of this Order, either pay the \$505 appellate filing fee or file a motion in the United States Court of Appeals for the Eighth Circuit for leave to proceed *in forma pauperis*.

**IT IS FINALLY ORDERED** that Plaintiff shall file any future documents or pleadings in connection with his appeal directly with the United States Court of Appeals for the Eighth Circuit.

Dated this 20<sup>th</sup> day of December, 2021.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE